

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RAJU DAHLSTROM, et al.,

Plaintiffs,

v.

SAUK-SUIATTLE INDIAN TRIBE,
et al.,

Defendants.

CASE NO. C16-0052JLR

ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANTS' MOTION TO
DISMISS

I. INTRODUCTION

Before the court is Defendants Sauk-Suiattle Indian Tribe of Washington (“the Sauk-Suiattle” or “the Tribe”), Community Natural Medicine, PLLC (“CNM”), Christine Morlock, Robert Morlock, and Ronda Metcalf’s (collectively “Defendants”) motion to dismiss Plaintiff Raju Dahlstrom’s claims against them. (MTD (Dkt. # 13).) Mr. Dahlstrom opposes Defendants’ motion. (Resp. (Dkt. # 19).) The court has reviewed the

1 motion, all of the parties' submissions related to the motion,¹ the relevant portions of the
 2 record, and the applicable law. Being fully advised, the court GRANTS the motion with
 3 respect to Mr. Dahlstrom's claims against the Sauk-Suiattle, but DENIES the motion with
 4 respect to Mr. Dahlstrom's claims against CNM, Dr. Morlock, Mr. Morlock, and Ms.
 5 Metcalf. The court declines to grant Mr. Dahlstrom leave to amend his claims against the
 6 Sauk-Suiattle because these claims fail as a matter of law. Finally, the court DENIES
 7 Defendants' request for Federal Rule of Civil Procedure 11 sanctions and attorney's fees.

8 II. BACKGROUND

9 On January 12, 2016, Mr. Dahlstrom filed a complaint under seal pursuant to the
 10 *qui tam* provisions of the False Claims Act ("FCA"), 32 U.S.C. §§ 3729-33, and the
 11 Washington State Medical Fraud and False Claims Act ("MFFCA"), RCW 74.66.005 *et*
 12 *seq.* (Compl. (Dkt. # 1).) The Sauk-Suiattle is a federally recognized Native American
 13 tribe in Darrington, Washington. (*Id.* ¶ 31; Gov't Mot. (Dkt. # 4) at 2.) CNM is a health
 14 clinic in Arlington, Washington, owned by Dr. Morlock and Mr. Morlock. (*See* Gov't
 15 Mot. at 2.) The complaint also lists Dr. Morlock, Mr. Morlock, and Ms. Metcalf
 16 (collectively, "Individual Defendants"), who is the Director of the Indian Health Service

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 18 ¹ Mr. Dahlstrom filed a surreply. (Surreply (Dkt. # 30).) A party may "file a surreply
 19 requesting that the court strike" material in a reply brief, provided that (1) the party files a notice
 20 of intent to file a surreply as soon as is practicable after receiving the reply brief; (2) the surreply
 21 is filed within five days of the filing of the reply brief and is "strictly limited to addressing the
 22 request to strike," and (3) the surreply does not exceed three pages. Local Rules W.D. Wash.
 LCR 7(g). In his surreply, Mr. Dahlstrom makes substantive arguments in support of his
 opposition to Defendants' motion to dismiss in the guise of a request to strike material in the
 reply brief. (*See generally* Surreply.) Nevertheless, even if the court were to consider Mr.
 Dahlstrom's surreply as a proper request to strike material in the reply brief under Local Rule
 LCR 7(g), the arguments advanced in Mr. Dahlstrom's surreply would not change the outcome
 of the court's ruling here.

1 (“IHS”) and the Health Clinic of the Sauk-Suiattle, as defendants. (*See* Compl. at 2;
2 Gov’t Mot. at 2.)

3 The Sauk-Suiattle employed Mr. Dahlstrom from 2010 through his termination on
4 December 8, 2015. (Compl. ¶ 30.) The Tribe initially hired Mr. Dahlstrom as a Case
5 Manager, but in April 2015, the Tribe promoted him to Director. (*Id.*; Gov’t Mot. at 3.)
6 Mr. Dahlstrom alleges that Defendants knowingly presented or caused to be presented
7 false or fraudulent claims to the United States—and by extension, the State of
8 Washington—by: (1) approving payments of cosmetic dentistry for two individuals; (2)
9 allowing an individual to use vaccines specifically donated to the Sauk-Suiattle for that
10 individual’s own private business; (3) fraudulently certifying compliance with the IHS
11 Loan Repayment Program; (4) using government funds to secretly purchase land
12 originally meant for residential care for children, and after acquiring that land, dropping
13 the programs for children; and (5) fraudulently using government resources designated
14 for healthcare facility costs. (*Id.*; *see generally* Compl.)

15 On September 26, 2016, the United States of America and Washington State
16 notified the court of their decision not to intervene in the action. (Notice (Dkt. # 8) at 2
17 (citing 31 U.S.C. § 3703(b)(4)(B) and RCW 74.66.050).) Accordingly, on September 28,
18 2016, the court unsealed the case and ordered Mr. Dahlstrom to serve Defendants.
19 (9/8/16 Order (Dkt. # 9).)

20 On January 12, 2017, Defendants filed the instant motion to dismiss Mr.
21 Dahlstrom’s complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). (MTD.)
22 On the same day, Defendants filed a supplement to their motion to dismiss to move for

sanctions and attorney's fees. (Supp. Mot. (Dkt. # 14).) The court now considers Defendants' motions.

III. ANALYSIS

A. Standard for a Motion to Dismiss

When considering a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), the court construes the complaint in the light most favorable to the nonmoving party. *Livid Holdings, Ltd. v. Salomon Smith Barney, Inc.*, 416 F.3d 940, 946 (9th Cir. 2005). The court must accept all well-pled facts as true and draw all reasonable inferences in favor of the plaintiff. *Wyer Summit P'ship v. Turner Broad. Sys., Inc.*, 135 F.3d 658, 661 (9th Cir. 1998). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); see *Telesaurus VPC, LLC v. Power*, 623 F.3d 998, 1003 (9th Cir. 2010). A court may dismiss a complaint if it lacks a cognizable legal theory or states insufficient facts under a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990); *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534 (9th Cir. 1984).

The court need not accept as true a legal conclusion presented as a factual allegation. *Iqbal*, 556 U.S. at 678. Although the pleading standard of Federal Rule of Civil Procedure 8 does not require "detailed factual allegations," it demands more than "an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.* (citing *Twombly*, 550 U.S. at 555). A pleading that offers only "labels and conclusions or a formulaic

1 recitation of the elements of a cause of action” will not survive a motion to dismiss under
2 Federal Rule of Civil Procedure 12(b)(6). *Id.*

3 **B. Sovereign Immunity**

4 Defendants argue that they are immune from Mr. Dahlstrom’s claims due to the
5 Tribe’s sovereign immunity. (MTD at 2.) Defendants further claim that the
6 Sauk-Suiattle’s sovereign immunity extends to all Defendants. (MTD at 5, n.1.) Mr.
7 Dahlstrom responds that sovereign immunity does not exist “where, as here, the suit is
8 brought by or on behalf of the United States,” and he contends the word “person” in the
9 FCA includes tribal entities such as the Sauk-Suiattle. (Resp. at 15-21.)

10 The FCA imposes civil liability on “any person” who “knowingly presents, or
11 causes to be presented, to an officer or employee of the United States Government . . . a
12 false or fraudulent claim for payment or approval.” 31 U.S.C. § 3729(a). An FCA claim
13 may be commenced by the Government or by a private person—a “relator”—as a *qui tam*
14 civil action on behalf of the United States Government. 31 U.S.C. § 3730(a)-(b).
15 Although private individuals may bring suit on behalf of the United States under the
16 FCA’s *qui tam* provisions, the FCA “does not subject a State (or state agency) to liability
17 in such actions.” *Vt. Agency of Nat. Res. v. United States ex rel. Stevens*, 529 U.S. 765,
18 787 (2000). In *Stevens*, the Court concluded that in the context of FCA *qui tam* suits, the
19 term “person” in § 3729(a) does not include states. *Id.* (citing 31 U.S.C. § 3729(a)).

20 Similar to state sovereign immunity, “[a]s a matter of federal law, an Indian tribe
21 is subject to suit only where Congress has authorized the suit or the tribe has waived its
22 immunity.” *Kiowa Tribe of Okla. v. Mfg. Techs. Inc.*, 523 U.S. 751, 754 (1998) (citing

1 *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Eng'g*, 476 U.S. 877 (1986);
 2 *Santa Clara v. Martinez*, 436 U.S. 49 (1978); *United States v. U.S. Fid. & Guar. Co.*, 309
 3 U.S. 506 (1940)). Because “immunity possessed by Indian tribes is not coextensive with
 4 that of the States,” tribal immunity is “a matter of federal law and is not subject to
 5 diminution by the States.” *Id.* at 755-56 (citing *Blatchford v. Native Village of Noatak*,
 6 501 U.S. 775 (1991) (distinguishing state sovereign immunity from tribal sovereign
 7 immunity because tribes were not present at the Constitutional Convention and were thus
 8 not parties to the “mutuality of . . . concession” that “makes the States’ surrender of
 9 immunity from suit by sister states plausible”)). The court now considers whether
 10 Defendants in this suit are protected by tribal sovereign immunity.²

11 1. Sauk-Suiattle Indian Tribe

12 Like a state, a Native American tribe “is a sovereign that does not fall within the
 13 definition of a ‘person’ under the FCA.” *Howard ex rel. United States v.*
 14 *Shoshone-Paiute Tribes of the Duck Valley Indian Reservation*, 608 F. App’x 468, 468
 15 (9th Cir. 2015) (citing *Stevens*, 529 U.S. at 787 (2000)) (“[T]he same historical evidence
 16 and features of the FCA’s statutory scheme that failed to rebut the presumption for the
 17 states in *Stevens*, here similarly fail to rebut the presumption for sovereign Indian
 18 tribes.”). The Sauk-Suiattle tribe is a federally recognized Native American tribe.

21 ² Because Mr. Dahlstrom brings his claim under the FCA’s *qui tam* provisions and the
 22 United States has declined to intervene (Notice at 2), the court need not decide whether
 Defendants have sovereign immunity from FCA claims in which the United States does
 intervene.

(Compl. ¶ 31; MTD at 2.) The Tribe is thus immune from Mr. Dahlstrom's *qui tam* FCA claims.

2. CNM

Because the Sauk-Suiattle has sovereign immunity with respect to Mr. Dahlstrom's *qui tam* suit, whether CNM is also immune depends on whether it "functions as an arm of the tribe." *Allen v. Gold Country Casino*, 464 F.3d 1044, 1046 (9th Cir. 2006) (holding that a casino was entitled to sovereign immunity as an arm of the tribe). Tribal sovereign immunity extends to business activities of the tribe, not merely governmental activities. *Id.* (citing *Kiowa Tribe*, 523 U.S. at 757-60). "The question is not whether the activity may be characterized as a business, which is irrelevant under *Kiowa*, but whether the entity acts as an arm of the tribe so that its activities are properly deemed to be those of the tribe." *Id.* The Ninth Circuit has developed a five-factor test to determine whether a business functions as an "arm of the tribe" such that it is entitled to sovereign immunity. *White v. Univ. of Cal.*, 765 F.3d 1010, 1025 (9th Cir. 2014) (citing *Breakthrough Mgmt. Grp., Inc. v. Chukchansi Gold Casino and Resort*, 629 F.3d 1173, 1187 (10th Cir. 2010)). The court examines:

(1) the method of creation of the economic entities; (2) their purpose; (3) their structure, ownership, and management, including the amount of control the tribe has over the entities; (4) the tribe's intent with respect to the sharing of its sovereign immunity; and (5) the financial relationship between the tribe and the entities.

Id. An entity asserting immunity as an arm of a sovereign tribe must show by a preponderance of the evidence "that it is, in fact, an arm of the tribe." *Gristede's Foods, Inc. v. Unkechuage Nation*, 660 F. Supp. 2d 442, 466 (E.D.N.Y. 2009) (holding that the

1 requirement that a business be licensed by the tribal council because it was on tribal
2 grounds was insufficient to demonstrate that the business was an arm of the tribe).

3 Defendants argue that “all defendants . . . [a]re tribal employees or agents or
4 officials acting in their official capacity,” but they do not explicitly argue that CNM is an
5 arm of the tribe. (MTD at 5-6, n.1; Reply (Dkt # 20) at 3.) In fact, Defendants imply that
6 CNM is not an arm of the Tribe, by arguing that with the exception of CNM, each of the
7 named defendants are employees of the Sauk-Suiattle Tribe. (*See* Reply at 3.)

8 Mr. Dahlstrom also argues inconsistently concerning CNM’s status vis-à-vis the
9 Tribe. On the one hand, Mr. Dahlstrom argues that CNM is a business corporation
10 owned by Dr. Morlock and Mr. Morlock. (Resp. at 1.) In his response to Plaintiffs’
11 motion to dismiss, Mr. Dahlstrom contends that “CNM has no connection with the
12 Sauk-Suiattle Tribe, other than profiting from federally funded vaccines which Dr.
13 Morlock diverted from the tribal health clinic for use in her own private business.” (*Id.* at
14 2.) However, in his complaint, Mr. Dahlstrom asserts that Defendants are “so
15 inextricably intertwined” that they constitute a single entity. (Compl. ¶ 23.) The court
16 concludes that Defendants have not met their burden of establishing that CNM is an arm
17 of the tribe. The court therefore denies Defendants’ motion to dismiss CNM on the basis
18 of sovereign immunity.³

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20 ³ Defendants also argue in a footnote to their reply that it is not clear that the allegations
21 against CNM fall within the scope of the FCA. (Reply at 3 n.1.) Mr. Dahlstrom claims that
22 CNM diverted federally funded vaccines from the Tribe through false claims made by its
owners, Dr. Morlock and Mr. Morlock. (Compl. ¶¶ 35, 74; Resp. at 3.) Because the court
accepts these allegations as true for the purpose of evaluating Defendants’ motion to dismiss, the

1 3. Individual Defendants

2 Mr. Dahlstrom is suing Individual Defendants in their individual capacities.
 3 (Resp. at 3; Compl ¶¶ 32-34.) Defendants argue that Individual Defendants “were tribal
 4 employees or agents or officials acting in their official tribal capacity.” (MTD at 5-6, n.1;
 5 Reply at 3.) Defendants argue that the Tribe’s sovereign immunity, therefore, extends to
 6 Individual Defendants.

7 The Ninth Circuit’s decision in *Stoner v. Santa Clara County Office of Education*,
 8 502 F.3d 1116, 1125 (9th Cir. 2007), precludes Defendants’ argument. In *Stoner*, the
 9 Ninth Circuit held that state employees may be sued under the FCA even for “actions
 10 taken in the course of their official duties.” *Id.* The Court reasoned that *Stevens* does not
 11 preclude *qui tam* suits against individual state employees “because such [actions] seek
 12 damages from the individual defendants rather than the state treasury.” *Id.* (citing *Alden*
 13 *v. Maine*, 527 U.S. 706, 757 (1999)). The court concludes that just as the reasoning of
 14 *Stevens* extends to provide Tribes with sovereign immunity, so too does the reasoning in
 15 *Stoner* extend to permit suits against individual tribal employees for “actions taken in the
 16 course of their official duties.” *Stoner*, 502 F.3d at 1125. Individual Defendants are thus
 17 not immune from suit due to sovereign immunity.⁴ *See id.*

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 court finds that Mr. Dahlstrom’s complaint sufficiently states a claim for relief against CNM.
Wyler Summit, 135 F.3d at 661.

20 ⁴ Defendants alternatively argue that the court should dismiss Mr. Dahlstrom’s claims
 21 because the Tribe is a necessary and indispensable party that cannot be joined pursuant to
 22 Federal Rule of Civil Procedure 19. (MTD at 5-6 n.1 (citing Fed. R. Civ. P. 19).) As the moving
 parties, Defendants have the burden of persuasion to establish that the Tribe is a necessary and
 indispensable party pursuant to Rule 19. *Desoto Cab Co., Inc. v. Picker*, 196 F. Supp. 3d 1107,

1 **C. Sanctions and Attorney’s fees**

2 Defendants seek Federal Rule of Civil Procedure 11 sanctions and attorney’s fees
 3 against Mr. Dahlstrom and Mr. Dahlstrom’s attorney because “the doctrine of tribal
 4 sovereign immunity [is] so firmly established in this Circuit as to warrant imposition of
 5 attorney’s fees for proceeding with a lawsuit against a clearly immune defendant.”
 6 (Supp. Mot. at 2 (citing *Hardin v. White Mountain Apache Tribe*, 779 F.2d 476 (9th Cir.
 7 1985) (holding that attorneys’ fees were appropriately awarded because the plaintiff’s
 8 claim was “patently barred by Supreme Court discussion of the scope of tribal
 9 sovereignty” and the plaintiff acted in bad faith))). Defendants argue that Mr. Dahlstrom
 10 has a “pattern and practice of filing multiple grievances against former employers and of
 11 filing groundless lawsuits.” (*Id.* at 1.)

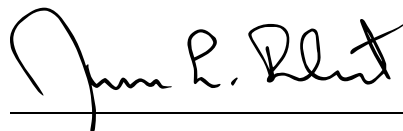
12 Federal Rule of Civil Procedure 11 sanctions are committed to the discretion of
 13 the court. *Holgate v. Baldwin*, 425 F.3d 671, 675 (9th Cir. 2005). Because the court
 14 grants in part and denies in part Defendants’ motion, the court does not find that Mr.
 15 Dahlstrom’s claims were patently barred or brought in bad faith. The court thus declines
 16 to sanction Mr. Dahlstrom or his attorney or award Defendants attorney’s fees.

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 18 1118 (N.D. Cal. 2016) (citing *Brum v. Cty. of Merced*, No. 1:12-cv-01636-AWI-KSO, 2013 WL
 19 2404844, at *4 (E.D. Cal. May 31, 2013)); *see also* *Makah Indian Tribe v. Verity*, 910 F.2d 555,
 20 558 (9th Cir. 1990) (citing *Sierra Club v. Watt*, 608 F. Supp. 305, 312 (E.D. Cal. 1985) (“The
 21 moving party has the burden of persuasion in arguing for dismissal.”)). Defendants assert their
 22 Rule 19 argument in a single footnote without supporting analysis. (MTD at 5-6 n.1.) The
 argument is insufficiently developed, and therefore the court declines to rule on it. *See, e.g.*,
Brian Jonestown Massacre v. Davies, No. 13-CV-04005 NC, 2014 WL 1900844, at *4 (N.D.
 Cal. May 12, 2014) (citing *Shermoe v. United States*, 982 F.2d 1312, 1317 (9th Cir. 1982))
 (“Defendant has provided no evidence or argument regarding whether joinder of other parties is
 possible or necessary. Defendant thus falls far short of meeting his burden of showing that a
 party is indispensable and cannot be joined.”).

IV. CONCLUSION

Based on the foregoing analysis, the court GRANTS Defendants' motion to dismiss (Dkt. # 13) with respect to Mr. Dahlstrom's claims against the Sauk-Suiattle, but DENIES the motion with respect to Mr. Dahlstrom's claims against CNM, Dr. Morlock, Mr. Morlock, and Ms. Metcalf. The court DISMISSES Mr. Dahlstrom's claims against the Tribe with prejudice and without leave to amend because these claims fail as a matter of law. Finally, the court declines Defendants' request to award Rule 11 sanctions and attorney's fees.

Dated this 21st day of March, 2017.



JAMES L. ROBART
United States District Judge